

MONTANA LEGISLATIVE HISTORY

Chapter 365 19 95

Bill H 287 S _____ Original bill & history C

H. Committee on Taxation

Hearing Date(s) Jan 27 ☒ C

Feb 03 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Feb 03 ☒ C

S. Committee on Taxation

Hearing Date(s) Mar 08 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Mar 08 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

3/09	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	39	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	93	5
4/04	3RD READING AMENDMENTS CONCURRED	92	7
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 409		
	EFFECTIVE DATE: 10/01/95		

HB 287 INTRODUCED BY REAM, ET AL.

PROVIDE THAT DEPARTMENT OF REVENUE IS A JUDGMENT LIEN
CREDITOR
BY REQUEST OF THE DEPARTMENT OF REVENUE

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO TAXATION		
1/20	FISCAL NOTE REQUESTED		
1/23	SPONSOR FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
1/27	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/07	2ND READING PASSED	88	9
2/08	3RD READING PASSED	91	7
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
3/08	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	22	15
3/13	3RD READING FAILED	24	25
3/14	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 2ND READING	35	15
3/23	2ND READING CONCURRED AS AMENDED	50	0
3/24	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	88	8
4/03	3RD READING AMENDMENTS CONCURRED	94	5
4/05	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 365		
	EFFECTIVE DATE: 04/12/95		

HB 288 INTRODUCED BY MARSHALL, ET AL.

PROVIDE THAT A PERSON WHO TAKES A MOUNTAIN SHEEP USING AN
UNLIMITED MOUNTAIN SHEEP LICENSE, WITH THE EXCEPTION OF A
MOUNTAIN SHEEP TAKEN PURSUANT TO AN ADULT EWE LICENSE, IS
NOT ELIGIBLE TO RECEIVE ANOTHER SPECIAL LICENSE FOR THAT
SPECIES FOR THE NEXT 7 YEARS

1/20	INTRODUCED
1/20	FIRST READING
1/20	REFERRED TO FISH & GAME
1/31	HEARING

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0287, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that the priority date for a tax lien created by a warrant for distraint is the date the tax was due; providing that the lien on real or personal property created by a warrant for distraint is not valid against a third party who received an affidavit from the most recent grantor confirming that all taxes, assessments, penalties, and interest due have been paid; and providing an immediate effective date and an applicability date.

FISCAL IMPACT:

Expenditures:

There are no impacts to Department of Revenue expenditures under the proposed legislation.

Revenues:

The proposed legislation would improve the Department of Revenue's ability to collect delinquent taxes and should therefore increase revenue collections. However, the department does not have sufficient data to accurately estimate the increase in overall tax collections.

Jane Lewis 1-23-95
JANE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Bob Ream
BOB REAM, PRIMARY SPONSOR DATE
Fiscal Note for HB0287, as introduced

HB 287

{Tape: 1; Side: A.}

HEARING ON HB 287

Opening Statement by Sponsor:

REP. BOB REAM, House District 69, Missoula, said that HB 287 was brought forward at the request of the Revenue Oversight Committee. He explained that the bill would conform the priority date for tax liens created by a Department of Revenue warrant for distraint to liens filed for withholding taxes and unemployment insurance contributions. He pointed out that currently there is \$26 million in accounts receivable for individual income tax and \$3 million in accounts receivable for withholding. This bill would help address this situation.

Informational Testimony:

Dave Woodgerd, Counsel for the DOR, defined "warrant for distraint" and provided testimony explaining the need for this legislation. His written comments are attached as EXHIBIT 1.

Proponents' Testimony:

None.

Opponents' Testimony:

Bob Pyfer, Montana Credit Unions League, explained that the League's concerns were that this would create another "hidden" lien that would have priority even though it had not been filed. It would also require additional paperwork and there would be additional costs for compliance which would have to be passed on to credit union members.

John Shontz, Montana Association of Realtors, objected to the bill because the county court house would have no record of a lien filed against the property by the state for non-payment of taxes. Every land transaction would require an affidavit.

Questions From Committee Members and Responses:

REP. ELLIOTT said he assumed that when an individual owes income tax, sells his house to a third party, and does not reveal that he owes the DOR money, the purchaser would be held responsible for the debt. Mr. Woodgerd said that could not happen because the priority date would not affect any property that the taxpayer didn't own at that point in time.

REP. ELLIOTT then asked if, after the warrant for distraint is filed, the person who owes the Department money sells his house and does not sign an affidavit or inform the third party, the purchaser would be responsible for the debt. Mr. Woodgerd said that would be true under present law. As a follow-up question,

REP. ELLIOTT asked if the language in this bill offered protection to the third party which is not available at this time. **Mr. Woodgerd** said it did not.

REP. WELLS asked if the language in the bill changed the priority date to the date the tax was due and, if so, would it be prior to the date the property was sold. **Mr. Woodgerd** said the bill was complex but before there can be a priority date, the Department must have a valid lien and the date they file that document, if the taxpayer does not own the property, there wouldn't be a valid lien. **REP. WELLS** said he assumed that title insurance would provide some protection against unknown debts. **Mr. Woodgerd** said he believed it would.

REP. STORY asked if the Department was filing these liens presently. **Mr. Woodgerd** replied that they file between 2,500 and 4,000 a year. To follow up, **REP. STORY** asked if this bill was passed, if it would put the state in a policy position to recognize DOR liens before IRS liens. **Mr. Schontz** suggested that what the language allows the Department to do is file a lien without going through the judicial process. **REP. STORY** asked if it would be possible for the taxpayer to transfer title of the property to someone else in order to avoid the lien and still have control of the property. **Mr. Heiman** explained that the bill does not address a date prior to the filing of the lien in the county courthouse. The priority date of the lien is different and that is what is under discussion. Several people could file liens against a property within a certain time period and how the money is distributed would be based in part on the priority date of the lien. The priority date reflects what the individual creditors would be working against and has nothing to do with third parties. **Mr. Schontz** said he understood that this bill would substantially change that because the priority date would be the date the taxes were due. **Mr. Heiman** said there is no priority date until the warrant is filed.

{Tape: 1; Side: B.}

REP. BOHLINGER referred to the testimony provided by Mr. Pyfer stating that this creates a hidden lean that is not on file and would add to the cost of compliance and he asked for comments. **Mr. Woodgerd** indicated that this is already in the law and what the bill would do is extend it to apply to other taxes. The cost of compliance would be minimal because it would require only one additional document to be signed and he did not think that would add that much to the cost of the loan. On the other hand, the Department will be in a much better position to collect because what usually happens is the Internal Revenue Service has an earlier priority date and they collect their taxes and sometimes there is not much left for the state. **REP. BOHLINGER** said he had also heard that it would be necessary for someone to sign an affidavit testifying to the fact that there no obligations against the property and he inquired about the cost of that. **Mr. Woodgerd** said it wasn't a matter of filing the affidavit, the

cost would be in the preparation and he assumed a form could be put together, signed and notarized for a minimal cost.

REP. NELSON asked for further clarification. **Mr. Woodgerd** said that under this bill, there are two aspects. First, they must have a valid lien, and once they have that, the priority date will determine who among the creditors will receive the money. As far as filing a lien after the property has been sold, this bill would not change anything, because under current law or under this law if it passed, the Department would not have a valid lien if the property is owned by someone else. **REP. NELSON** said his concerns were for the credit union and the private purchasers.

REP. ELLIOTT said he thought there were two issues -- the lien and the priority date. He understood that the Department would file a lien if the individual owed taxes. The property would be sold and the money would be distributed based on a judge's allocation based on the length of time the money had been owed. **Mr. Woodgerd** agreed. **REP. ELLIOTT** then addressed the matter of the lien. If that was not disclosed in the transaction, he understood that the buyer would be responsible. He asked if the affidavit would be a form of protection for the buyer which does not currently exist. **Mr. Woodgerd** said there is no need for the affidavit at this time because when DOR files the lien, there is notice in the county courthouse. With this legislation, the person providing the money for a loan would not want a lien coming in ahead of the transaction and the affidavit would then provide protection for the lender. If the affidavit is on file, the lender would then have the first priority over and above the state, the IRS or any other lien holder. If the affidavit is not there, it would be possible that the Department of Revenue could come in ahead of the lender who holds the mortgage. **REP. ELLIOTT** then asked if the affidavit protected the purchaser and the person holding the mortgage. **Mr. Woodgerd** said that was correct. **Mr. Pyfer** added that the affidavit provided protection against HB 287 because without the bill the protection is not needed because the lien is on file at the courthouse. This bill would make an exception for the Department to allow them to file a lien which would not be evident in the county courthouse records.

REP. FUCHS said he thought he understood the intent of the bill but he objected to the creation of more "red tape" which would increase the cost of doing business. He asked how long it had taken them to collect the \$32 million and how the Department decided a debt wasn't collectible. **Mr. Woodgerd** said he wasn't sure how long it had taken to collect that amount but the Legislative Auditor had given them the figures. They do have permission to write off some of the debts and he offered to obtain more information.

REP. WELLS asked if this bill would make a difference in the amount of taxes collected. **Mr. Woodgerd** said he had no way of knowing how much more would be collected but he was confident

that they would collect more. He emphasized that in many cases where they were unable to collect, it was because the Internal Revenue Service had gotten there first.

REP. ELLIOTT said he thought it would be helpful to the Committee to have information on the amount of money owed and the money collected in warrants of distraint where the Department was not in competition with anyone else. **Mr. Woodgerd** said he could obtain that information.

REP. STORY asked if the main benefit in the bill was not to put the state in front of commercial lenders, but to get ahead of the IRS. **Mr. Woodgerd** said that was the main reason for the bill. To follow up, **REP. STORY** asked if this legislation would create problems for the lending industry when they were negotiating a mortgage or personal loan. He asked if they investigated outstanding tax debts of borrowers. **Mr. Pyfer** said they would not look beyond what was filed at the county courthouse. Under the current system, when a warrant for distraint is filed, it would show in the records and there would be no need to look further.

REP. ARNOTT asked the Department to explain why they were not more current in filing warrants. **Mr. Woodgerd** replied that they consider filing a warrant for distraint the last step because they make every effort to collect the taxes before they file, and they also must provide legal notice to the taxpayer, and 30 days to file an objection or request a hearing. **REP. ARNOTT** then asked how this process differs from the IRS. **Mr. Woodgerd** said the difference is that they have a process similar to what the DOR is asking for in the bill. Once they file a lien at the courthouse, they relate it to the date they sent the assessment to the taxpayer.

{Tape: 2; Side: A.}

REP. BOHLINGER commented that this is a confusing issue, but what was clear was that in order for lending institutions to protect themselves, it will be necessary for them to secure affidavits to certify to the debt that might exist on a piece of property and that would add to the cost of the process. He asked if this legislation would put the lenders at a disadvantage. **Mr. Pyfer** said that was how he understood the bill. The problem would arise if a loan was made after the warrant for distraint was issued.

REP. MURDOCK asked if this would present a problem for the title insurance companies. **Mr. Shontz** said the real issue was whether title insurance would cover. What would happen is that insurers would not insure any liens made by the State of Montana, so the person paying for the insurance would have no coverage.

CHAIRMAN HIBBARD asked if this legislation had been introduced in a previous session. **REP. REAM** said he did not know. **Mr.**

Woodgerd explained that previous legislation gave them authority to use this method in collecting withholding tax but it did not extend beyond that.

Closing by Sponsor:

REP. REAM said the reason he agreed to sponsor this bill was that it was related to a matter of fairness. The vast majority of Montanans pay their taxes and he was irritated that there are people who try to get around paying what they owe. He said he was also a believer in states' rights and the state should be in line ahead of the IRS. The DOR does everything possible to collect taxes before they file a warrant for distraint and REP. REAM agreed that this was the appropriate procedure. Judy Paynter will furnish the Committee with more statistics on this issue prior to executive action.

HEARING ON HB 293

Opening Statement by Sponsor:

REP. BOB REAM, House District 69, Missoula, said everyone is aware that we are moving into the electronic age, and in "reinventing government" it is time to look at the efficiencies that could be provided to state agencies. HB 293 would require employers to submit state income tax withholding and old fund liability taxes by electronic transfer. The bill was originally written to phase the process in over the next three years. Many businesses are already using this system for federal income tax withholding. REP. REAM explained that, although the bill uses the term "require," the DOR has prepared amendments which would make electronic submission an option. EXHIBIT 2.

Informational Testimony:

Char Maharg, Supervisor, Income and Miscellaneous Tax Division, DOR, said this bill was brought before the Committee because it is time they change the way they do business to provide better service and simplify requirements for employers. Electronic transfer would safeguard and streamline operation for the DOR. Ms. Maharg reviewed the provisions of the bill as outlined in EXHIBIT 3. Some of the benefits would be the elimination of paper, increased accuracy in filing, and eventual decreased processing costs for the Department.

{Tape: 2; Side: B.}

Proponents' Testimony:

Riley Johnson, National Federation of Independent Business, rose in support of the bill with the appropriate amendments to make the system optional. He recommended to the Committee that the

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL

DATE 1/27/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	.		✓
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		

Testimony In Support of HB 287
Introduced Copy

Department of Revenue
January 27, 1995

This bill conforms the priority date for tax liens created by a Department of Revenue warrant for distraint to those liens filed for withholding taxes and unemployment insurance contributions. It will allow the Department to collect a larger share of the taxes assessed and reduce the tax burden on the vast majority of Montanans who pay their fair share.

When the Department can not collect taxes owed the state, it issues a warrant for distraint which is a lien upon any property owned by the debtor. The problem is that the debtor is usually in trouble with the IRS in addition to the state. The priority date of a lien or warrant for distraint determines the order in which the creditors receive payment. The earlier the priority date, the more likely that the creditor will receive any money.

Presently a Department warrant for distraint priority date is the date the warrant is filed. This bill will conform all liens for all taxes collected by the Montana Department of Revenue. The priority date for all liens will be the date the tax is due.

The Department of Revenue currently files between 3,500 and 4,000 warrants for distraint a year. The Department often finds itself in competition with the Internal Revenue Service in order to collect taxes owed to the State of Montana. If this bill passes, the Department will be in a better position to collect state taxes when the IRS is trying to collect federal taxes.

Liens created by the Internal Revenue Service are effective upon assessment. The Service must file their lien in the same manner as the state but their priority date is the date of assessment. All that is required to establish the priority date is that the Service issue an assessment. Once the information regarding the assessment is put into the IRS computer, the Service's position is secured.

The State of Montana therefore is at a great disadvantage when competing with the Internal Revenue Service. Oftentimes there is a span of time between the time the tax liability occurred and the warrant for distraint is filed. This is because the Department must satisfy certain legal requirements, such as notice prior to issuing a warrant for distraint. This process takes time.

The language in HB 287 is identical to that found in §15-30-208, MCA which applies to withholding taxes. It is also similar, to the statute relating to the certificates of lien for unemployment insurance contributions, §39-51-1304, MCA. Included in HB 287, §39-51-1304 and §15-30-208, MCA is a provision protecting innocent parties' liens and interest in the real or personal property. This language was originally adopted after an agreement was reached with certain creditors and the land title companies. A creditor can protect their interests by asking the debtor to sign an affidavit that the taxes have been paid. If the creditor files a lien before the Department's warrant and has such a document, they would have first priority.

Passage of this bill will put the State of Montana in a better position in its tax collection efforts. The state will collect a larger percentage of the taxes assessed. The Department currently has an accounts receivable of around \$32 million. This bill will help reduce this large collection problem. It is unfair to the taxpaying citizens of Montana who must foot the bill for those few who do not pay their fair share.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Location _____ COMMITTEE _____ BILL NO. HB 287
 DATE 1/27/94 SPONSOR(S) Rep. Ream

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Dave Woodgerd	Dept. of Revenue	#8 287		X
John Shontz	mt Assoc REARMS	287		✓
#Bob Pyfer	MT Credit Unions League	287	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

operation in time to receive this consideration so only the feedstock going to the existing plant would qualify. **Mr. Hoffman** said the DOR has analyzed the amendments and they believe they do take care of the technical questions that had been raised.

REP. WENNEMAR said he assumed that they could expect to see the full impact in the 1997-98 biennium. **Mr. Kelly** said that would be the earliest. He pointed out that this would be on new production which will also be paying gross proceeds tax and RIT tax and therefore, even with the severance tax exemption, it will result in a net gain for Montana.

Closing by Sponsor:

REP. HOLLAND said it had been a very informative hearing and he appreciated the questions. He said it was important to look at value-added Montana products, the revenues they will return to the state, the jobs they will provide, and the step it takes toward solving environmental problems. EXHIBIT 3.

EXECUTIVE ACTION ON HB 287

Motion:

REP. REAM MOVED THAT HB 287 DO PASS.

Discussion:

REP. REAM said this was a good bill although there had been some concern expressed at the time of the hearing. He handed out a document which provided information relative to the DOR's procedure in filing a warrant for distraint. EXHIBIT 4. In response to concerns expressed by **Mr. Pyfer**, who represented the credit unions at the hearing, the DOR has prepared amendments which address those concerns. EXHIBIT 5.

{Tape: 3; Side: A.}

Mr. Woodgerd reviewed the DOR's procedure, the amendments, and provided an example of how the process works. EXHIBIT 6. He said **Mr. Pyfer** had told him that, with these amendments, the bill was acceptable. As amended, the bill provides that the DOR would be the first in line, after the lender, to recover proceeds from the sale of property. The bill also clarifies that the State of Montana is a "judgment lien creditor" which qualifies the state to recover before the federal government.

Neil Peterson, Bureau Chief, Income Tax Division, furnished the accounts receivable information requested during the hearing by **Rep. Fuchs** and **Rep. Elliott**. EXHIBIT 7.

REP. ORR said he was "distraught over distraint" during the hearing and he appreciated the information provided by the DOR

which does clarify many points. He was, however, confused over the statement on the example that says the state is now a judgment lien creditor and then says the state is not a judgment lien creditor. **Mr. Woodgerd** explained that the example was not written clearly and the second reference should have said the IRS was not a judgment lien creditor.

REP. ARNOTT said she could understand why the DOR was requesting this legislation but she had some concern that it was making the process of purchasing property more complex. **Mr. Woodgerd** said the amendments took care of the added complexity and the bill will not require any more paperwork.

REP. REAM asked if the legislation would increase the total amount of collections. **Mr. Woodgerd** said it was hard to predict but he assumed it would because it will give them the opportunity to recover prior to the IRS. \$1.6 million was collected in 1994 and they expect it will be significantly more, possibly double that amount.

Motion/Vote:

REP. REAM MOVED THAT THE AMENDMENTS TO HB 287 BE ADOPTED. The motion passed, 19 - 1.

Motion/Vote:

REP. REAM MOVED THAT HB 287 AS AMENDED DO PASS. The motion passed 18 - 1.

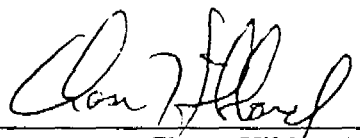


HOUSE STANDING COMMITTEE REPORT

February 3, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that **House Bill 287** (first reading copy -- white) do pass as amended.

Signed: 
Chase Hibbard, Chair

And, that such amendments read:

1. Title, line 5.

Following: "PROVIDING"

Insert: "THAT THE DEPARTMENT OF REVENUE IS A JUDGMENT LIEN
CREDITOR; PROVIDING"

2. Title, lines 6 through 9.

Strike: "PROVIDING" on line 6 through "PAID;" on line 9

Insert: "PROVIDING THAT THE LIEN ON REAL OR PERSONAL PROPERTY
CREATED BY A WARRANT FOR DISTRRAINT IS NOT VALID AGAINST
PURCHASERS, CERTAIN HOLDERS OF SECURITY INTERESTS, JUDGMENT
LIEN CREDITORS, AND OTHER LIENHOLDERS WHOSE INTEREST IS
RECORDED PRIOR TO THE FILING OF THE WARRANT FOR DISTRRAINT;"

3. Page 1, line 22.

Following: "lien,"

Insert: " the department is a judgment lien creditor,"

4. Page 1, line 28 through page 2, line 6.

Following: "(4)" on page 1, line 28

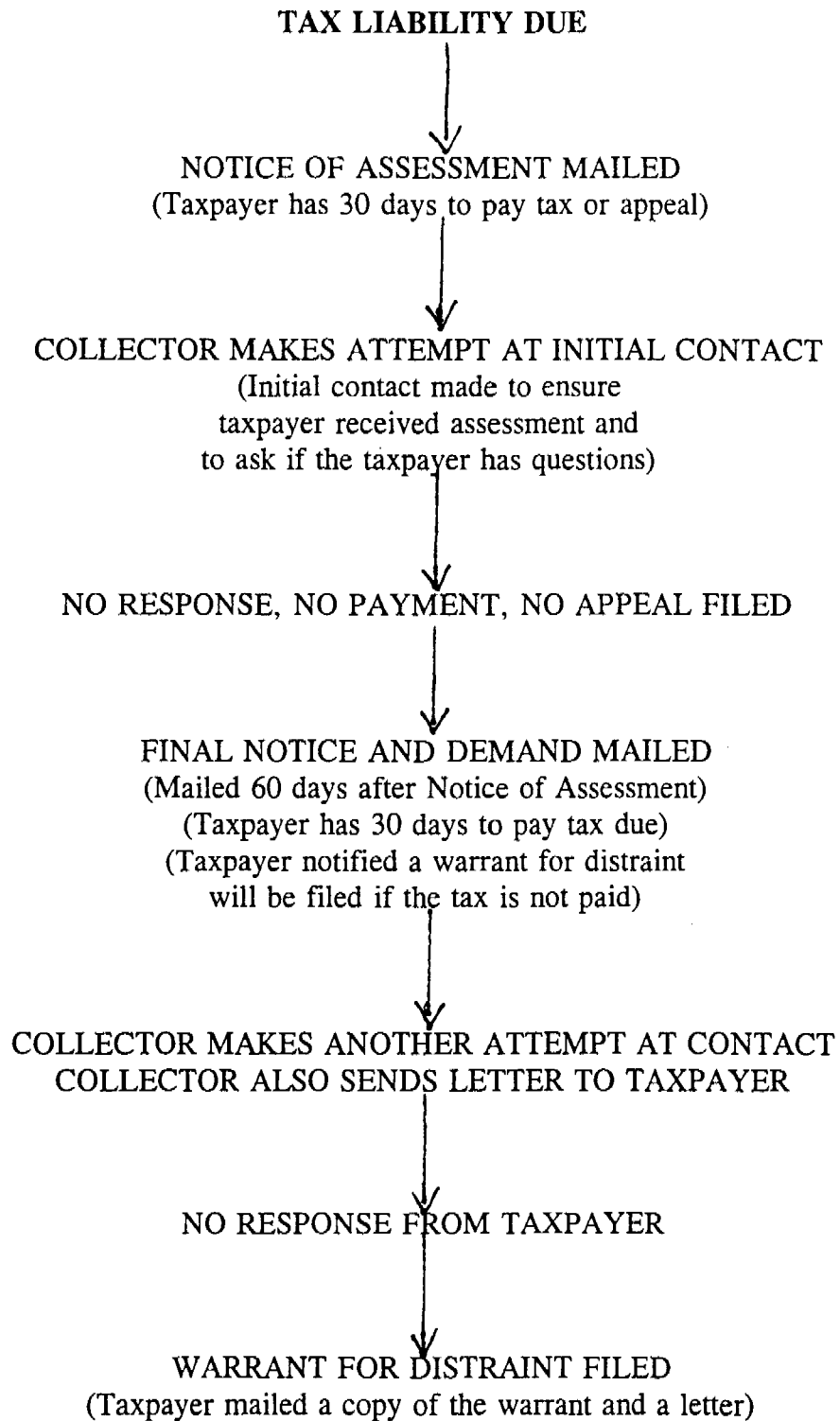
Strike: the remainder of subsection (4) and subsection (5) in its
entirety

Insert: "The tax lien provided for in (3) is not valid against
purchasers, holders of security interests, judgment lien
creditors, and those lienholders identified in Title 71,
chapter 3, parts 3 through 15, whose interest is recorded
prior to the filing of the warrant for distrainment."

Committee Vote:

Yes 18, No 1.

291524SC.Hbk



EXAMPLES

Taxpayer :	Tax due 4/15/93
Lender:	Files mortgage on 5/1/93 3
Montana Department of Revenue:	Warrant for Distrainment filed 8/1/94
Internal Revenue Service:	Files lien 1/1/94 - assessment on 6/1/93

Taxpayer decides to sell house - there is not enough value to satisfy all of the creditors - who can collect or in other words; who has priority?

CURRENT LAW

The Lender has first priority because it has the earliest filed lien.

The IRS has second priority because it's lien, although filed later than Montana's, relates back to the assessment date which is before the date that Montana filed it's lien.

Montana has last priority and may not get any of the proceeds of the sale

PROPOSED LAW W/O AMENDMENTS

The Lender has first priority because it filed first but must file affidavit from taxpayer to protect it's priority.

Montana has second priority because it's lien will have a priority of the date that the tax was due which is before the IRS assessment date.

The IRS has last priority since it's assessment date is after Montana's tax is due.

PROPOSED LAW WITH AMENDMENTS

The Lender has first priority because it filed first and does not have to protect itself from Montana's priority by filing an affidavit.

Montana has second priority ahead of the IRS for two reasons: (1) Montana is now a judgement lien creditor and is therefore protected from the assessment date priority by federal law, and; (2) Montana has a priority back to the date filed against the IRS because they are not a purchaser, security interest holder, mechanics lien holder or judgement lien creditor.

The IRS has last priority for the above reasons.

The advantage of the amendments is that it will protect most creditors and still give Montana an opportunity to have a priority which is ahead of the federal government, depending on when the liens are filed.

AMENDMENTS TO HOUSE BILL 287
INTRODUCED BILL

PREPARED BY THE DEPARTMENT OF REVENUE
FEBRUARY 1, 1995

EXPLANATION

Amendments 1, and 2, and 3 conform the title to amendments 4, 5, 6, and 7. Amendment 3 clarifies that the Department is a judgment lien creditor. Amendment 4 identifies those lienholders and secured parties who are not effected by the Department's priority date as set forth in subsection (3). Subsection (3) is not valid against those parties whose interest is recorded prior to the filing of the warrant for distraint. Amendments 6 and 7 strike that portion of the bill that is now covered by amendment 4.

1. Title, lines 6 through 9
Following: "DUE;"
Strike: remainder of lines 6 through 9 in their entirety
2. Title, line 5
Following: "AN ACT PROVIDING"
Insert: "THAT THE DEPARTMENT IS A JUDGMENT LIEN CREDITOR"
3. Title, line 6
Following: "DUE"
Insert: "PROVIDING THAT THE LIEN ON REAL OR PERSONAL PROPERTY CREATED BY A WARRANT FOR DISTRAINT IS NOT VALID AGAINST PURCHASERS, CERTAIN HOLDERS OF SECURITY INTERESTS, JUDGMENT LIEN CREDITORS AND OTHER LIENHOLDERS WHOSE INTEREST IS RECORDED PRIOR TO THE FILING OF THE WARRANT FOR DISTRAINT"
4. Page 1, line 22
Following: "lien"
Insert: "the department is a judgment lien creditor"
5. Page 1, line 27
Following: "distraint"
Insert: "(4) The tax lien provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors and those lienholders identified in Title 71, Chapter 3, Parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint.

Renumber: subsequent sections

6. Page 1, lines 28 through 30
Strike: Lines 28 through 30 in their entirety
7. Page 2, lines 1 through 6
Strike: lines 1 through 6 in their entirety

Testimony In Support of HB 287
Introduced Copy

Department of Revenue
January 27, 1995

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Presently a Department warrant for distraint priority date is the date the warrant is filed. This bill will conform all liens for all taxes collected by the Montana Department of Revenue. The priority date for all liens will be the date the tax is due.

The Department of Revenue currently files between 3,500 and 4,000 warrants for distraint a year. The Department often finds itself in competition with the Internal Revenue Service in order to collect taxes owed to the State of Montana. If this bill passes, the Department will be in a better position to collect state taxes when the IRS is trying to collect federal taxes.

Liens created by the Internal Revenue Service are effective upon assessment. The Service must file their lien in the same manner as the state but their priority date is the date of assessment. All that is required to establish the priority date is that the Service issue an assessment. Once the information regarding the assessment is put into the IRS computer, the Service's position is secured.

The State of Montana therefore is at a great disadvantage when competing with the Internal Revenue Service. Oftentimes there is a span of time between the time the tax liability occurred and the warrant for distraint is filed. This is because the Department must satisfy certain legal requirements, such as notice prior to issuing a warrant for distraint. This process takes time.

The language in HB 287 is identical to that found in §15-30-208, MCA which applies to withholding taxes. It is also similar, to the statute relating to the certificates of lien for unemployment insurance contributions, §39-51-1304, MCA. Included in HB 287, §39-51-1304 and §15-30-208, MCA is a provision protecting innocent parties' liens and interest in the real or personal property. This language was originally adopted after an agreement was reached with certain creditors and the land title companies. A creditor can protect their interests by asking the debtor to sign an affidavit that the taxes have been paid. If the creditor files a lien before the Department's warrant and has such a document, they would have first priority.

Passage of this bill will put the State of Montana in a better position in its tax collection efforts. The state will collect a larger percentage of the taxes assessed. The Department currently has an accounts receivable of around \$32 million. This bill will help reduce this large collection problem. It is unfair to the taxpaying citizens of Montana who must foot the bill for those few who do not pay their fair share.

State of Montana

Marc Racicot, Governor

EXHIBIT 7
DATE 2/3/95
HB 287



Department of Revenue

Mick Robinson, Director

P.O. Box 202701

Helena, Montana 59620-2701

January 31, 1995

Representative Chase Hibbard, Chairman
House Taxation Committee
Montana State Capitol
Helena, MT 59620

Dear Representative Hibbard:

During last Friday's hearing on HB287, Representative Elliot and Representative Fuchs requested information concerning our accounts receivable. Specifically, they requested the percentage of accounts receivable collections from accounts in a "warrant for distraint" status and the percentage of our inventory in a "warrant for distraint" status. The following information provides Representatives Elliot and Fuchs the information they requested as well, additional information for the committee as a whole concerning our accounts receivable system.

- * Approximately 95% of the Department's accounts receivable balance resides in the Income & Miscellaneous Tax Division.
- * As of January 1, 1995, the Income & Miscellaneous Tax Division's accounts receivable balance totaled \$32,856,654.
- * Accounts receivable consist of income tax, withholding tax, payroll tax, accommodations tax, inheritance tax, and miscellaneous taxes.
- * Withholding tax and payroll tax receivables currently have a lien priority date of the due date of the tax and are not affected by HB287.
- * Inheritance tax receivables rarely become delinquent as the tax is due 18 months after the date of death and the estate cannot be closed until the tax is paid.
- * Of the remaining tax types, income tax receivables constitute by far the largest component of the accounts receivable balance.
- * Systematic transfers are made of accounts over 730 days old to the State Auditor's Bad Debt section.

- * In 1994, 1057 accounts were transferred to Bad Debts totaling \$4,561,478. In 1993, 779 accounts were transferred to Bad Debts totaling \$3,131,877.
- * In 1994, A/R collections from division activities totaled \$12,276,544.
- * In 1994, A/R collections from the State Auditor's offset program totaled \$149,103.
- * Write-offs of accounts receivable average 1.1% of total accounts receivable.

Sincerely,

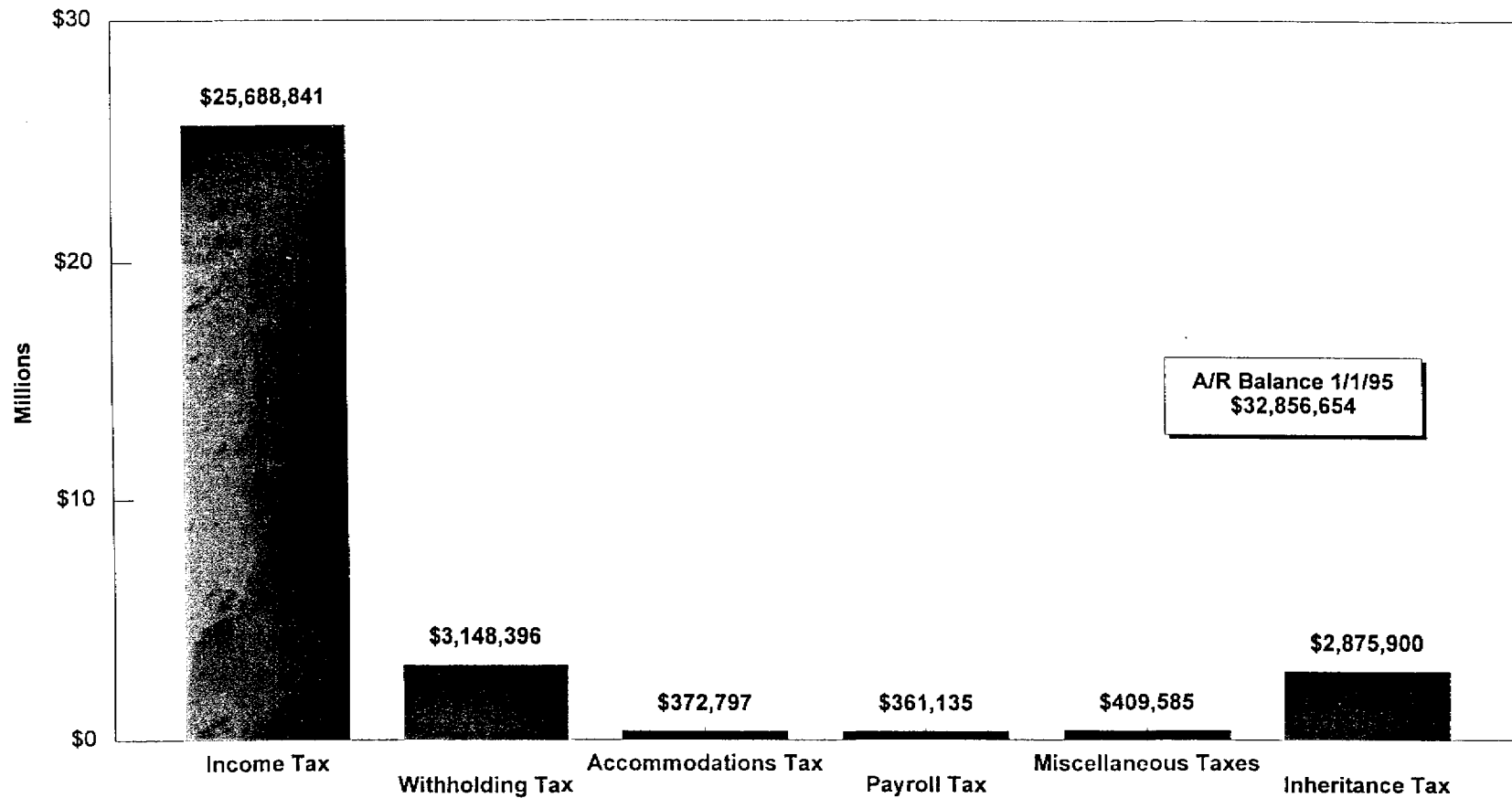


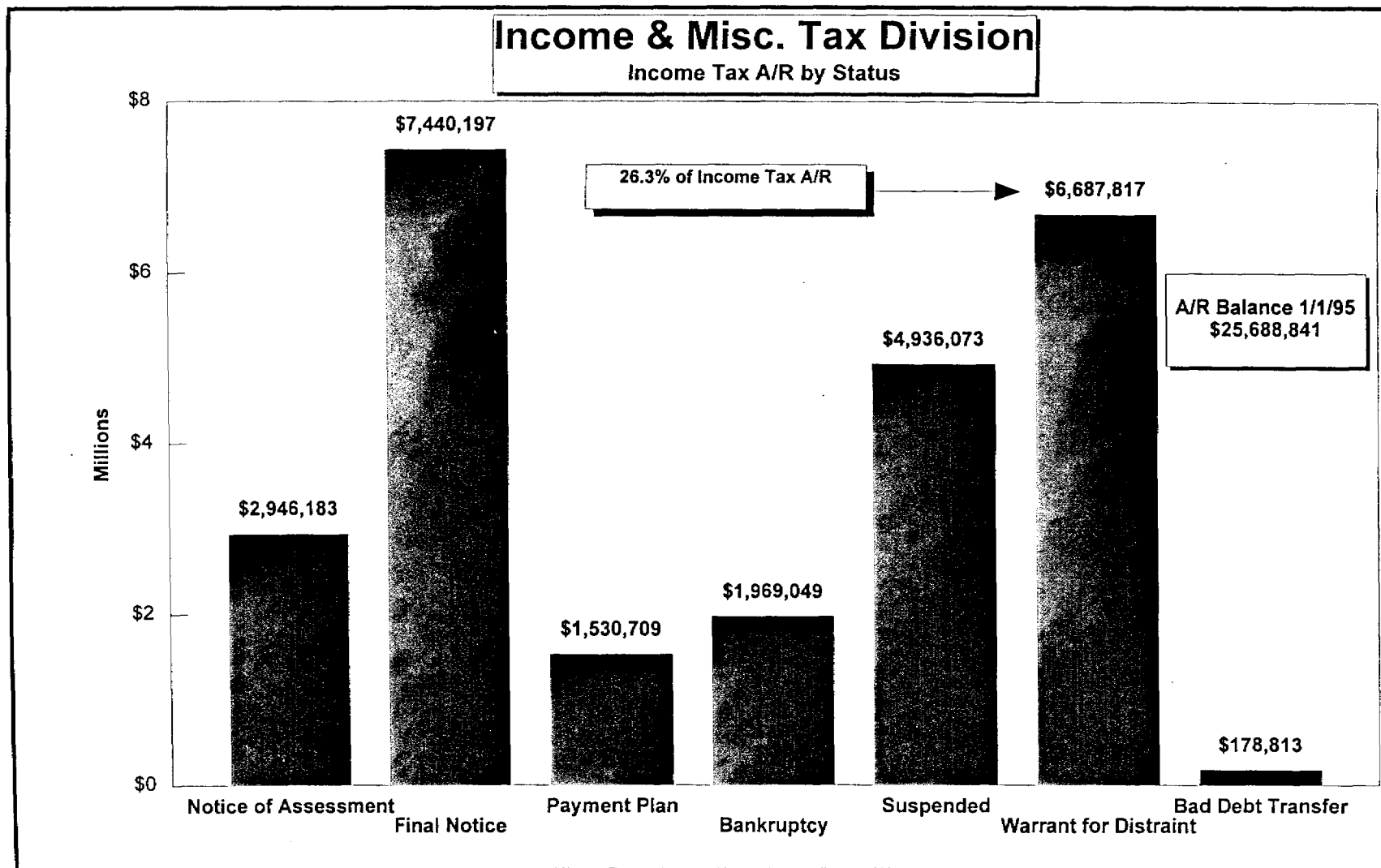
Mick Robinson
Director

Attachment

Income & Misc. Tax Division

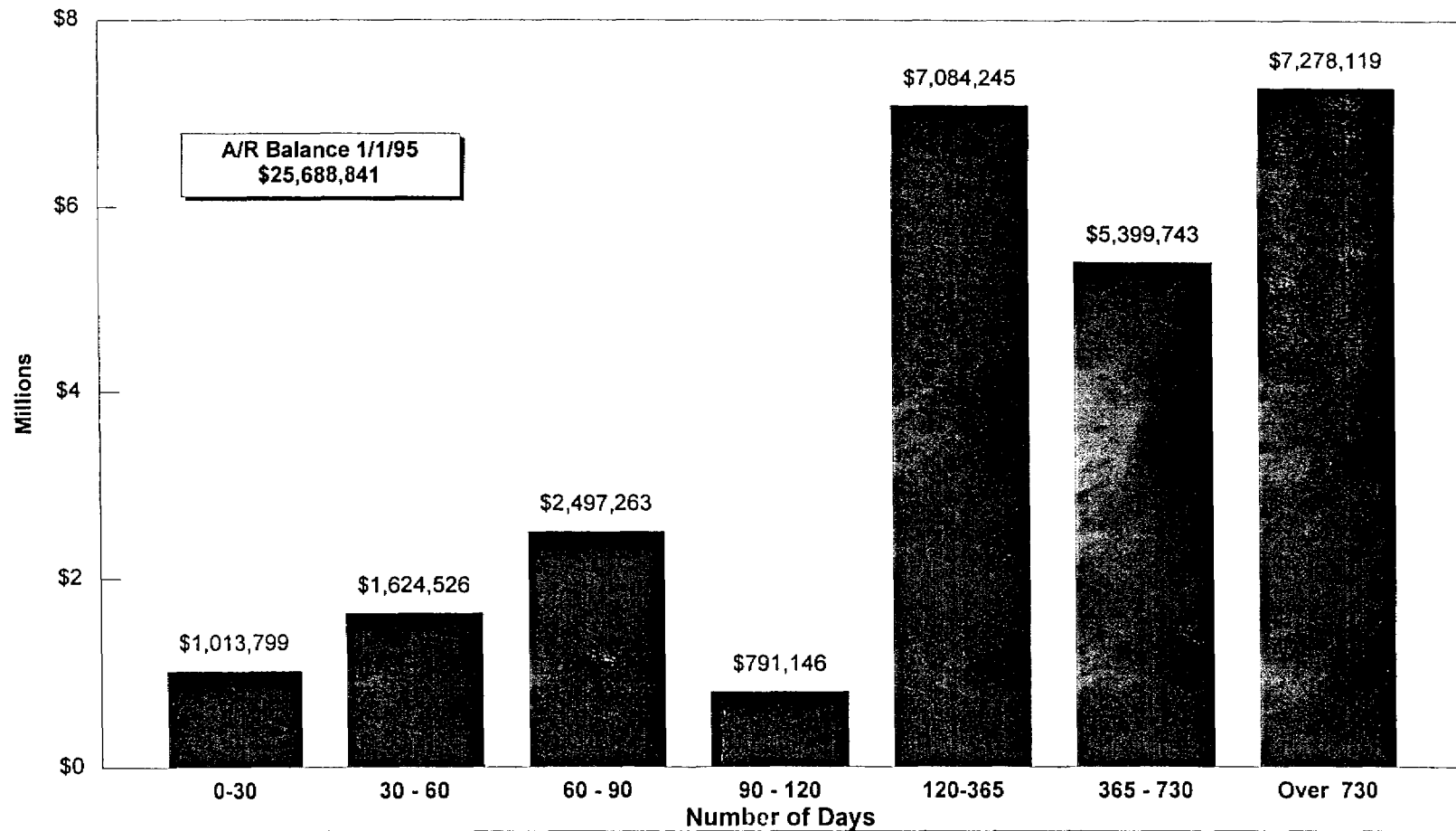
Accounts Receivable by Tax Type





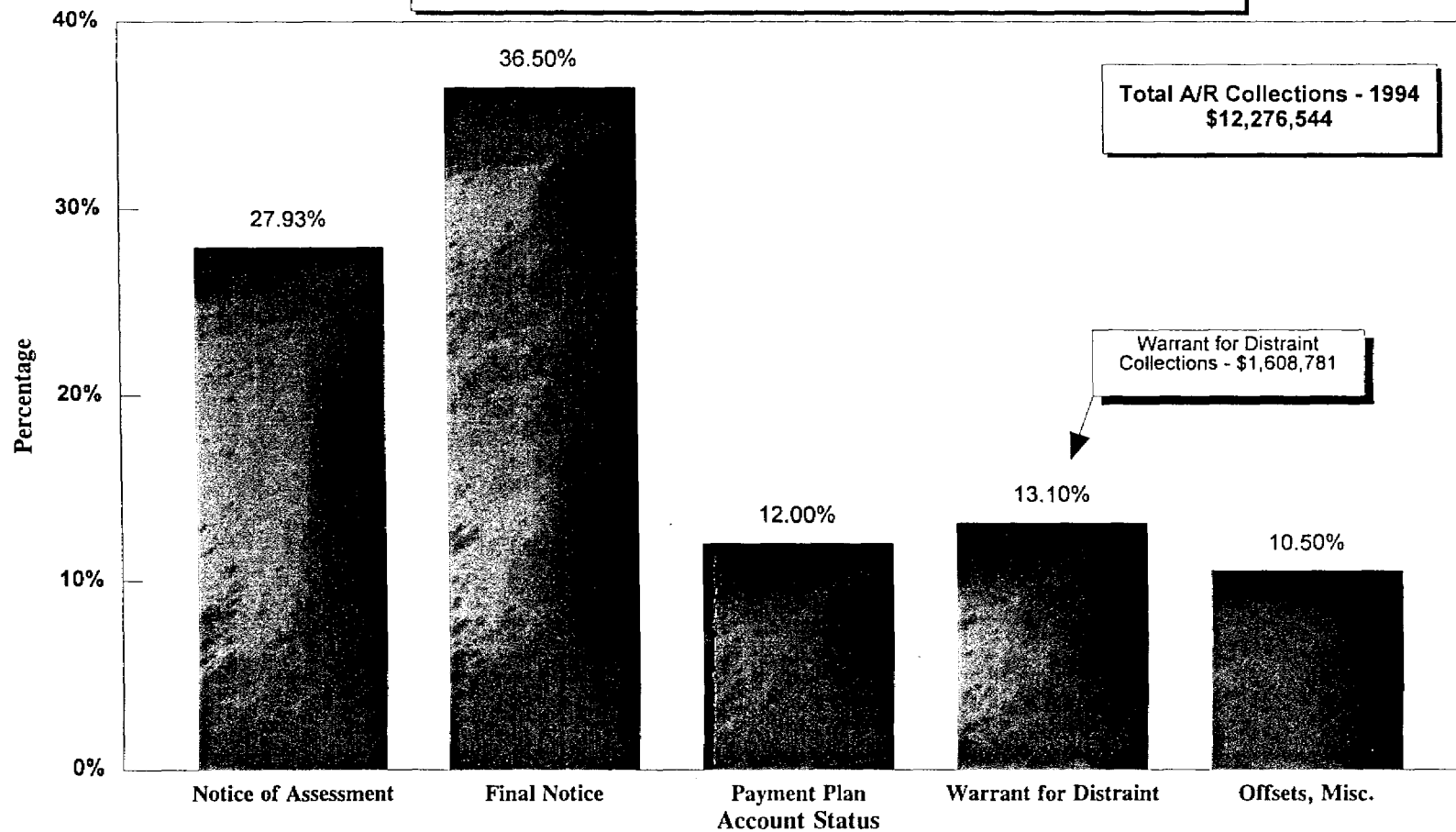
Income & Misc. Tax Division

Aging of Income Tax A/R



Income & Misc. Tax Division

Accounts Receivable Collections by Account Status



Closing by Sponsor:

SEN. BAER said in 1986, the Legislature heard from the people, and today the people have been heard. He stated there will be no shift from East to West, and no shift from agriculture to commercial in this bill. SEN. BAER commented there must be a reduction and then a freeze of property taxes.

HEARING ON HB 287Opening Statement by Sponsor:

REP. ROBERT "BOB" REAM, HD 69, Missoula County, presented HB 287 from the Department of Revenue. He explained the bill simply gives top priority to the lender, and second priority to the state over the Internal Revenue Service (IRS) when competing for assets owned by a person who owes taxes. He stated this bill is revenue positive and possibly over a million dollars would go to the State of Montana.

Proponents' Testimony:

Dave Woodgerd, Chief Counsel for the Department of Revenue, presented written testimony in support of HB 287. EXHIBIT 4.

Bob Pyfer, Montana Credit Unions League, testified in support of the bill.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REP. REAM commented as of January 1, 1995 there was almost \$33 million in accounts receivable in the incoming miscellaneous tax division. He explained last year the department collected \$12 million, however, \$4½ million was written off as bad debts. He stated this bill could help recover some of the \$4½ million if the state gets in before the IRS does.

{Tape: 1; Side: B; Approx. Counter: 17.1.}

on the state general fund and local government funds. He asked Mr. Akey how he can justify taking a program that is needed, and charge state general funds and local government funds instead of charging the industry, which is where the problem arises from. Mr. Akey responded he questions the premise upon which SEN. GROSFIELD'S question is based upon. He said a study was conducted in South Dakota and legalization of gambling actually caused a reduction in pathological gamblers. Mr. Akey commented in 1987, when the state went from a flat fee on the machines to a 15% tax, state and local governments stated they would use part of the money to address the social consequences of gambling. He acknowledged they never did what they said they would do and that isn't the fault of the industry. Mr. Akey affirmed the state and local governments do have a responsibility to take a share of the revenues to do what they said they would do in 1987.

Closing by Sponsor:

SEN. PIPINICH reported in the original bill the local governing bodies were suppose to set up the program. He stated this isn't enough money but it is a start.

{Tape: 2; Side: 1; Second Tape Inserted.}

EXECUTIVE ACTION ON HB 287

Motion: SEN. VAN VALKENBURG MOVED HB 287 BE CONCURRED IN.

Discussion: SEN. VAN VALKENBURG commented he has been giving the Department of Revenue a hard time for the last three sessions about the fact they continue to have over \$20 million of bad debt which they are unable to collect. He stated this bill will help them collect it.

Vote: MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 407

Motion: SEN. MIKE FOSTER MOVED TO ADOPT AMENDMENTS (sb040701.ajm).

Discussion: SEN. VAN VALKENBURG asked if discussion in regard to the 1,000 ton limit has taken place. CHAIRMAN DEVLIN asked Mr. Hoffman to discuss the limit. Mr. Hoffman stated during the course of the hearing the discussion started with 2,500 tons. He explained 1,000 tons times the \$20.00 figure (first year the rate is applied within the law) times 200 mills is about \$4,000.00 in tax for a small operation.

SEN. ECK asked Mr. Hoffman what rougher garnet concentrate is. Mr. Hoffman replied it is a state-of-the-art term. He explained different quality of garnets are used as an abrasive. SEN. ECK asked Mr. Hoffman when purchasing a bucket of gravel is it

**MONTANA SENATE
1995 LEGISLATURE
TAXATION COMMITTEE**

ROLL CALL

DATE

March 18, 1995

[illegible]

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 287 (third reading copy -- blue), respectfully report that HB 287 be concurred in.

Signed: 
Senator Gerry Devlin, Chair

 Amd. Coord.

Sec. of Senate

SEN. VAN VALKENBURG
Senator Carrying Bill

541125SC.SRF

Testimony In Support of HB 287 BILL NO. SB 287
Third Reading CopyDepartment of Revenue
February 8, 1995

The purpose of this bill is to put the State of Montana and the Internal Revenue Service on a level playing field when competing for assets owned by a person who owes taxes. Currently, the IRS often ends up with an earlier priority date on their lien and therefore they often get all of the assets available, leaving Montana with uncollectible taxes.

When the Department does not receive payment for taxes owed the State of Montana, we try to contact the person and determine what the problem is and work out a solution for payment. If after contacting the person in writing and by telephone, we still can not collect the taxes, as a last resort, we issue a warrant for distraint. A warrant for distraint is a lien upon any property owned by the person.

The priority date of a lien or warrant for distraint determines the order in which the creditors receive payment. The earlier the priority date, the more likely that the creditor will receive any money or other assets held by the debtor.

Presently, the priority date for a state warrant for distraint is the date the warrant is filed. This bill, as amended in the House, will change the priority date of our warrant to the date that the tax is due. However, this priority date does not apply to private lienholders, if they file their lien prior to ours. It does apply to liens filed by the Internal Revenue Service.

The Department of Revenue currently files between 3,500 and 4,000 warrants for distraint a year. The Department often finds itself in competition with the Internal Revenue Service in order to collect taxes owed to the State of Montana. If this bill passes, the Department will be in a better position to collect state taxes when the IRS is trying to collect federal taxes.

Liens created by the Internal Revenue Service have a priority date of the date of assessment, pursuant to federal law. The Service must file their lien in the same manner as the state but their priority date is much earlier. All that is required to establish the priority date is that the Service issue an assessment. Once the information regarding the assessment is put into the IRS computer, the Service's position is secured upon filing the lien.

The Department's lien under current law, has a priority date which is the same as the filing date. The State of Montana therefore is at a great disadvantage when competing with the Internal Revenue Service. There is always a span of several months between the time the tax liability occurred and the warrant for distraint is filed. This is because the Department must satisfy certain legal requirements, such as notice prior to issuing a warrant for distraint. In addition, we try to personally contact the person before we file a warrant. This process takes time.

Specifically, the bill states that the Department is a judgement lien creditor. This is important because federal law states that the early priority date is not effective against judgment lien creditors. The IRS maintains that the Department is not a judgement lien creditor.

Secondly, the bill provides that the Department has an early priority based on the due date of the tax. However, the bill provides further that the early priority date does not apply to purchasers, holders of security interests, judgement lien creditors, and other lienholders if they file their lien prior to the Department's lien. The IRS's lien is not one of these liens and thus, the Department will be able to enforce it's early priority date against the IRS.

Passage of this bill will put the State of Montana in a better position in its tax collection efforts. The state will collect a larger percentage of the taxes assessed. The Department currently has an accounts receivable of around \$32 million. This bill will help reduce this large collection problem. It is unfair to the taxpaying citizens of Montana who must foot the bill for those few who do not pay their fair share.

DATE March 8, 1995

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 287 Rep. Ream

SB 260 Senator Pipinick
SB 334 Senator Bear

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Kenneth E. Hardman	Myself	334	✓	
Dick Danson	Citizen Taxpayer	334	✓	
NORMA Jean Bokes	DCHS - ADA	260	✓	
Blake Wodal	Lewis & Clark County	334		✓
Sharon Haff	Mt Catholic Org	260	✓	
Dave Woodgerd	DOR	HB 287	✓	
ELLEN ENGSTEDT	Don't Gamble With The Future	SB 260	✓	
John Greenie	Self -	SB 334	✓	
Walt Dupes	Self	SB 334	✓	
Bob Pyfer	MTCred. Unions League	HB 287	✓	
Jerry Sommer	SELF	SB 334	✓	
JACK MURPHY	SELF + FAMILY	SB 334	✓	
GREG HINKLE	CHERRY CRK. FARM	SB 334	✓	
Gabe Hinkle	Cherry Crk. Farm	SB 334	✓	

Wilbur Reumann

VISITOR REGISTER

W of Just. ce

SB 260 ✓

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY